IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.125 OF 2002

IN

NOTICE OF MOTION NO.2609 OF 1993

IN

SUIT NO.4326 OF 1993

Narendra C. Wadhwana ...Petitioner

v/s

Harkisan C. Wadhwana ...Respondent

Mr P.G. Lad for Petitioner.

Mr B.A. Vora for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 7TH MARCH 2007.

P.C. :-

1. By this petition, the petitioner alleges that the respondent has wilfully disobeyed the order dated 31st October 1996 passed by the learned Single Judge of this Court in notice of motion No.2609 of 1993. The operative part of the order is as under :-

> "(i) Notice of motion is made absolute in terms of prayer (b) which reads as under :-
>
> . '(b) that pending the hearing and final disposal of the suit, the defendant be restrained by an order and injunction of this Hon'ble Court from any manner, alienating, encumbering and / or parting with possession of the suit premises viz. Flat No.2, 'B' Wing, Arihant Apartment, Arihant Co-op. Housing Society, S.V. Road, Borivali (West), Bombay 400 092.'
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> (ii) The defendant shall pay the outgoings and maintenance in respect of the said flat to the society regularly. If the

same are in arrears he shall clear the same within a period of four weeks from today. The defendant shall also a sum of Rs.600/- p.m. to the Court which amount to be retained in the Court with liberty to the plaintiff to apply for investment when the amount get substantially accumulated.

(iii) he defendant shall make such deposit on or before 20th of each month and such deposit to be made w.e.f. 1st November 1996. The payment for November 1996 to be made on or before 20th December 1996 and so on.

(iv) This application stands disposed off accordingly.

(v) No order as to costs."

. The Court by that order did not disturb the possession of the respondent's premises but put a condition that he was to pay outgoings of the premises and he was to deposit an amount of Rs.600/- p.m. According to the petitioner, the respondent has not deposited the amount which was directed to deposit

pursuant to the order dated 31st October 1996. The respondent does not dispute that he has not deposited the amount at the rate of Rs.600/- p.m. which he was directed to deposit by the Court. The reason given by the respondent for not obeying the Court's order is that his wife was suffering from schizophrenia and for her treatment he was to spend money. On 9th January 2004, the respondent stated before the Court that he would deposit an amount of Rs.10,000/- by next date of hearing and that he will also file an undertaking. Perusal of the order dated 16th January 2004 shows that the respondent did not deposit the amount of Rs.10,000/- which he had promised to deposit. He also remained absent before the Court, therefore the Court issued bailable warrant. It appears that after the bailable warrant was issued, the respondent and his Advocate appeared before the Court and stated that they had deposited Rs.10,000/-. Therefore, the bailable warrant was recalled and he was directed to deposit an amount of Rs.2,500/- on or before 5th March 2004. By order dated 25th March 2004, the respondent was given time till 31st March 2004 for depositing Rs.2,500/-. Admittedly, the respondent has not deposited that amount till today. When the matter was heard by the Court on 21st February 2007, following order was made :-

"The learned counsel appearing for respondent

states that by Monday i.e. 26th February 2007, the respondent will deposit in the Court the full amount which he obliged to deposit pursuant to the order dated 31st October 1996."

. The respondent has not deposited the amount. He has filed an affidavit dated 5th March 2007. In that affidavit he has stated that he is unable to deposit any amount in the Court because he has to spend money for the treatment of his wife. In this affidavit, there is no explanation as to why on 21st February 2007 undertaking was given to deposit the entire amount by 21st February 2007. The only submission made by the learned counsel appearing for respondent was that the respondent has not deposited the amount because he has to spend money for treatment of his wife and that he has tendered unconditional apology and that apology be accepted. in my opinion, if the respondent was unable to deposit the amount as directed by the Court by its order dated 31st October 1996, the respondent should have applied to the Court for modification of the order dated 31st October 1996 which directs him to deposit the amount at the rate of Rs.600/- p.m. in Court. Without getting the order modified by the Court, the respondent is not justified in disobeying the order. The conduct of the respondent of disobeying the order without

applying to the Court for modification of the order for any reason, in my opinion, disentitles him to have his apology accepted. The second reason which disentitles him to have the apology accepted is that on 21st February 2007 he made a statement before the Court that he will deposit the entire amount by 26th February 2007. He has filed an affidavit subsequent to 26th February 2007, but in that affidavit there is no explanation as to why if he was not in a position to deposit the amount, statement was made before the Court on 21st February 2007 that the amount will be deposited. It is thus clear that a statement was made by the respondent which he had no intention to abide by, just to get time from the Court. Even till today, the respondent has not made any application for modification of the order which obliges him to deposit the amount. Till the order remains in force, the respondent is bound to abide by that order. If there are reasons, according to him, why he could not obey the order, it was for him to move the Court for cancellation or modification of the order. Without moving the Court for recall, cancellation or modification of the order, the respondent cannot disobey the order. It is thus clear that the respondent has wilfully and deliberately disobeyed the order and the unconditional apology tendered by him does not deserve to be accepted. Considering the conduct of the respondent, in my opinion, he is liable to be punished.

In my opinion, considering the gross conduct of the respondent, jail sentence will have to be imposed on him. The respondent is thus held guilty for having committed contempt of this Court and he is sentenced to undergo simple imprisonment for a period of one month and pay fine of Rs.2,000/-. He is also directed to pay as and by way of cost of this petition Rs.10,000/- to the petitioner. Petition is disposed off.

2. At the request of the learned counsel appearing for respondent, that part of the above order which imposes sentence on the respondent is stayed for a period of six weeks from today subject to condition that the amount of fine and the amount of cost are paid within a period of two weeks from today.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.